

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

JOSEPH PONIKVAR, JR.)	CASE NO. 1:09-CV-2621
)	
Plaintiff)	JUDGE DAN A. POLSTER
)	
vs.)	
)	
)	
CITY OF CLEVELAND HEIGHTS, <i>et al.</i>)	
)	ANSWER OF DEFENDANTS CITY OF
Defendants)	CLEVELAND HEIGHTS,
)	ROBERT C. DOWNEY, CITY OF
)	CLEVELAND HEIGHTS DIVISION OF
)	POLICE AND MARTIN G. LENTZ
)	
)	[Jury Demand Endorsed Hereon]

Now come defendants, City of Cleveland Heights, Robert C. Downey, City of Cleveland Heights Division of Police and Martin G. Lentz, by and through counsel, and for their answer to plaintiff's complaint state as follows:

1. Defendants admit the allegations asserted in paragraph 22 of plaintiff's complaint.
2. Defendants deny the remainder of the allegations asserted in Count 1 of plaintiff's complaint, including paragraphs 23, 24, 25 and 26.
3. Defendants deny the allegations asserted in Count 2 of plaintiff's complaint, including paragraphs 27 and 28.
4. Defendants deny the allegations asserted in Count 3 of plaintiff's complaint, including paragraphs 29 and 30.
5. Defendants deny the allegations asserted in Count 4 of plaintiff's complaint, including paragraphs 31, 32, and 33. Defendants are unable to admit or deny the allegations asserted in paragraph 34 of plaintiff's complaint on the basis that John Doe, Jane Doe and John Roe have not been identified or served.

AFFIRMATIVE DEFENSES

1. Plaintiff fails to state a claim upon which relief may be granted.
2. Defendants are entitled to all immunities, defenses and setoffs as set forth in Ohio Revised Code Chapter 2744 and/or other provisions of law.
3. Defendants are entitled to absolute and/or qualified immunity.
4. Plaintiff's injuries, if any, are the direct and proximate result of plaintiff's negligence.
5. Punitive damages are not available against the City.
6. Defendants reserve the right to amend their answer to include additional defenses and claims on their own behalf, the predicate of which may be established through ongoing discovery.

WHEREFORE, defendants pray that the amended complaint be dismissed, with fees and costs taxed to plaintiff. Defendants further pray for any other relief to which they may be entitled.

/s/ Dierdra M. Howard

JOHN H. GIBBON (0010986)

Director of Law

DIERDRA M. HOWARD (0079466)

Assistant Director of Law

40 Severance Circle

Cleveland Heights, OH 44118

(216) 2912-5775

Attorneys for defendants City of Cleveland Heights,
Robert C. Downey, City of Cleveland Heights
Division of Police and Martin G. Lentz

JURY DEMAND

Defendants demand a trial by jury in the maximum number of jurors permitted by law for each claim and cause of action in this Complaint.

/s/ Dierdra M. Howard

Dierdra M. Howard
Assistant Director of Director of Law

Attorney for defendants City of Cleveland Heights,
Robert C. Downey, City of Cleveland Heights
Division of Police and Martin G. Lentz

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of January, 2010, a copy of foregoing **answer of defendants City of Cleveland Heights, Robert C. Downey, City of Cleveland Heights Division of Police and Martin G. Lentz** was filed electronically. Notice of this filing will be sent by operation of the court's electronic filing system to all parties. Parties may access this filing through the court's system.

/s/ Dierdra M. Howard

Dierdra M. Howard
Assistant Director of Director of Law

Attorney for defendants City of Cleveland Heights,
Robert C. Downey, City of Cleveland Heights
Division of Police and Martin G. Lentz